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July 15, 2004

Ms. Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 Twelfth Street, S.W.  
Room TWB-204  
Washington, DC 20554

**Re: Notice of Ex Parte**

**Request to Update Default Compensation Rate for Dial-Around Calls from  
Payphones  
WC Docket No. 03-225**

Dear Secretary Dortch:

IDT Corporation ("IDT") submits this letter in response to the July 8, 2004 *ex parte* filing of APCC. APCC's filing is little more than a combination of ignoring pertinent arguments presented by those with opposing views and making unsupported claims. While time and human endurance prohibit IDT from addressing each error and oversight in APCC's filing, IDT addresses some of the more colorful oversights below.

APCC claims that IDT's "argument of sorts" fails to provide supporting evidence that IXCs would be compelled to charge only the listed surcharge. While IDT thought that its repeated statements regarding calling card providers' obligations under state consumer protection laws and state calling card disclosure regulations was sufficient – particularly since the Commission is expected to know the applicable laws which impact the decisions it makes – in order to address the APCC's claims, IDT refers to California Business and Professions Code § 17538.9(11), which states, "A company may not impose any fee or surcharge that is not disclosed as required by this section or that exceeds the amount disclosed by the company." Thus, since a calling card provider is required to disclose the payphone surcharge, it could not charge the consumer an amount in excess of the disclosed amount. In Florida, FAC 25-24.920(6) states, "A company shall not reduce the value of a card by more than the charges printed on the card, packaging, or visible display at the point of sale." IDT could easily provide additional examples, but our point has been made: we are right and the APCC is wrong.

Moreover, in implementing regulations that forced many calling card providers to revise their calling card disclosures, states have also recognized that calling card providers need time to implement changes, which is exactly what IDT and other IXC's are asking of the Commission. For example, Texas implemented a six-month grace period before its calling card disclosure rules became enforceable (16 TAC § 26.34(l)). So did Missouri (4 CSR 240-32.170(9)). Pending legislation in Illinois would permit approximately ten months (SB2731, pending governor signature). Florida granted more than three months (FAC 25-24.920(12)). Clearly, states that have considered the needs of calling card providers have recognized the legitimacy of providers' requests for a grace period. IDT and other calling card providers have asked the Commission for a slightly longer grace period than the examples above because the aforementioned state regulations only impacted cards prospectively printed and sold whereas the APCC's request would impact cards retrospectively printed and sold. Despite APCC's prostrations to the contrary, IDT's request for a 12-month grace period before the implementation of a payphone surcharge increase is reasonable and should be granted.

APCC also claims "most 'listed' payphone surcharges have been set at a level that anticipates the implementation of a higher rate and already recovers a substantial portion of the resulting increase in costs." APCC provides no evidence whatsoever that any of the IXC rates it has provided the Commission were modified after this proceeding was initiated (in anticipation of the implementation of a higher rate). Moreover, APCC completely ignores statements made by IXC's that due to the nature of the calling card business, whereby calling card providers receive as little as half the face value of a calling card, compel many providers to charge more than the default compensation rate in order to recover their costs. As IDT has advised the Commission, a calling card provider may receive as little as \$2.50 for the sale of a \$5.00 calling card. If the default payphone surcharge increases to \$0.50 and the card's user makes six calls from a payphone, the calling card provider will actually pay more to the PSPs (\$3.00) than it received for the sale of the card (\$2.50). These are simply not economics upon which a successful industry can exist.

IDT urges the Commission to very carefully scrutinize the APCC's request for an increase in the default payphone compensation rate. Furthermore, if the Commission chooses to implement an increase, IDT respectfully requests that the Commission provide sufficient time – one year – to permit calling card service providers to make all necessary changes and deplete existing calling card stock before implementing the default dial-around increase.

Sincerely,

**/s/ Carl Wolf Billek**

Carl Wolf Billek

Attachment

cc: Chris Libertelli (via email)  
Daniel Gonzalez (via email)  
Matthew Brill (via email)  
Scott Bergmann (via email)  
Jessica Rosenworcel (via email)  
Jeffrey Carlisle (via email)  
Tamara Preiss (via email)  
Jon Stover (via email)  
Carol Canteen (via email)  
Sharon Diskin (via email)  
Joel Marcus (via email)